IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1097 of 2005

IN

COMPANY PETITION NO. 414 OF 2005

CONNECTED WITH

COMPANY APPLICATION NO. 276 OF 2005

Kamani Employees Union .. Appellant

versus

KEC International Limited .. Respondents

...

Mr.T.N. Subramaniam a/w Ms.Nandini Menon for the appellant.

Mr.I.M. Chhagla a/w Mr.Riyaz Chhagla, Mr.Virag Tulzapurkar i/b M/s.Rajesh Shah & Co. for the respondent.

CORAM : R.M. LODHA AND

D.G. KARNIK, JJ

DATED : 12th December 2005.

P.C.:

Heard Mr.T.N. Subramaniam, the learned counsel for the appellant and Mr.Iqbal Chhagla, the learned Senior Counsel for the respondent.

2. The learned Single Judge by the impugned order dated 27th September, 2005 sanctioned the composite scheme of the arrangement between the respondent-company and Bespoke & Frivest Ltd and KEC Infrastructure Ltd and KEC Holdings Ltd under section 391 and 394 of the Companies Act, 1956. The Employees Union aggrieved by that order has come up in appeal.

3. Mr.T.N.Subramaniam, the learned counsel for the appellant submitted that the Employees Union was not afforded sufficient opportunity to take inspection of the relevant record concerning the meeting of share-holders and the resolution. Though inspection was provided by the Company for the period from 13th September 2005 to 19th September 2005, the learned counsel would submit, due to paucity of time, complete inspection could not be made and as a result thereof,

the Union was not able to identify the illegalities and irregularities committed in the conduct of the meeting and passing of the resolution to approve the proposed scheme. The learned counsel also submitted that from whatever inspection that was taken by the appellant, various discrepancies were found in the record pertaining to the conduct of the meeting. The attendance slips of large number of share holders did not mention the name of the share holders; proxy forms were not properly submitted; unauthorised persons attended the meeting and voted in favour of resolution and the authorisation letters in favour of the persons who voted in the meeting were also not in accord with law, particularly section 187 of the Companies Act and Clause 92 of the Memorandum of Articles of Association. He submitted that there were other illegal irregularities of over-writing of the attendance slips and ballot papers. Mr.T.N.Subramaniam relied upon the judgement of the Supreme Court in the case of **Miheer H. Mafatlal Vs. Mafatlal Industries Ltd, AIR 1997 Supreme Court 506** and submitted that there being illegalities and irregularities in following statutory procedure and the requisite meeting, the Court ought to have refused to sanction the composite Scheme of arrangement.

4. Mr.Iqbal Chhagla, the learned Senior Counsel for the company, on the other hand supported the order of the learned Single Judge. He submitted that the Employees Union accepted before the learned Company Judge that the Scheme was not prejudicial to the workmen as such. He would submit that during the course of hearing before the learned Company Judge, there was no challenge to the Scheme on the ground of it being unfair, unjust and unreasonable. The learned Senior Counsel submitted that adequate opportunity was given to the Union to take inspection of the relevant record. The relevant record was not withheld by the Company. For almost 26 to 27 hours, from 13th September 2005 to 19th September 2005, the inspection was provided by the Company and carried out by the appellant. He contended that in the garb of the inspection, it was not open to the Employees Union to have a roving and fishing enquiry. According to the learned Senior Counsel no illegalities and irregularities were committed in the conduct of the meeting and passing of the resolution approving the proposed Scheme. He submitted that the resolution was passed by the majority constituting 93.70% in number and representing 99.9924% in value present in person by proxy or by authorised representative. He, thus,

submitted that the sanction of the Composite Scheme of arrangement by the learned Single Judge is proper and warrants no interference by us in appeal.

5. We considered the submissions of the learned counsel and the learned Senior Counsel for the parties. It is not the case of the appellant that the respondent-Company did not provide inspection of the relevant record or the relevant record concerning the conduct of the meeting and resolution was withheld by the Company. As a matter of fact, the respondent Company provided the inspection of the relevant record on four days. The inspection continued for almost 26-27 hours during those four days. But due to paucity of time, the entire record could not be inspected by the appellant union. There was full opportunity to the appellant to have inspection of the entire relevant record concerning the meeting and the resolution passed therein. In the garb of inspection, obviously, the union could not have been permitted to make the roving and fishing enquiry. In our considered view, for want of any specific case of fraud, or gross illegality, merely because the appellant was not able to take inspection of the entire relevant record concerning the

conduct of the meeting and the resolution, it cannot be held that there was breach of statutory procedure. The consideration of the matter by the learned Company Judge in this regard does not suffer from any infirmity.

6. As regards the objection that the authorization letters by the body corporate shareholders in favour of the persons who in fact voted in a meeting were not in accordance with law, suffice it to say that such authorization letters are neither in breach of Section 187 of the Companies Act nor clause 92 of the Articles of Association. Section 187 of the Companies Act provides that a body corporate may authorise by resolution of its Board of Directors any person as it thinks fit to act as a representative at any meeting of the Company of which it is a member and a person authorised by such resolution shall be entitled to exercise the same rights and powers including the right to vote by Proxy on behalf of Body Corporate as if he was an individual member. Sample resolution of Adac Investment Limited, a member of the respondent Company, passed on 18th April 2005 providing for representation of the Company under section 187 of

the Companies Act was shown to us. The relevant part of the said resolution reads thus:

> RESOLVED FURTHER that if at any of the aforesaid meetings of such Companies, if more than one of the aforesaid representatives are present, then, in the absence of agreement between such representatives, the representative, whose name appears earlier in the order of names in the preceding resolution, shall act as a representative on behalf of the Company and exercise the voting rights on behalf of the Company at the said meeting"

7. By the said resolution, the persons named in the resolution are authorised to act as representatives of the Company and to attend and exercise all or any of the rights and powers including the right to vote by proxy for and on behalf of the Company at any meeting of the shareholders or any adjournment thereof. The resolution further provides that if more than one of such representatives are present, as per the agreement between such representatives, one representative shall attend and vote and in the absence of any such agreement between such representatives, the representative whose name appears earlier in the order of names shall act as a

representative on behalf of the Company and exercise the voting rights on behalf of the Company. Nothing has been shown that voting by the authorised representative was not in accordance with the said resolution. It is not in challenge that only one representative of the body corporate members attended and voted in exercise of the voting rights in the said meeting. We, thus find that there is no merit in the contention of the appellant-Union that the authorization letters in favour of the representative/s who voted in the meeting were not in accordance with law.

8. The other objections raised by Mr.T.N. Subramaniam are vague and unspecific. It appears from the record that there were independent scrutineers in the meeting. These independent scrutineers ensured that the person who attended the meeting and voted were authorised persons.

9. More importantly, the contentions raised by the learned counsel for the appellant, appear to us to be highly technical. in view of the admitted position that the scheme is not prejudicial to the interest of the workmen. To our specific query to

the learned counsel for the appellant whether before the learned Company Judge any challenge to the scheme was raised on the ground of it being unfair, unjust and unreasonable. The learned counsel could not firmly say about it nor anything was shown to us that the scheme was unfair, unjust or unreasonable. It is also not the case of the appellant that dissent voice of minority was stifted in the meeting. The fact is that the resolution in favour of the scheme was voted by 93.70% in number and represented 99.9924% in value present.

10. No case for interference in the impugned order is made out.

11. Appeal does not deserve to be admitted and is dismissed in limine.

Oral prayer for stay is rejected.

(R.M. LODHA, J)

(D.G. KARNIK, J)